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yet in existence which is liable to be attached. If and when the Government ultimately decide to pay the compensation in any particular form, the decree-holders may take such steps as they may then be advised. The present prayer for attachment seems to be wholly misconceived and agreeing with the view taken by the executing Court, I dismiss this appeal with costs.

B.R.T.

CIVIL WRIT

Before Falshaw, J.

SHRI BHAGWAT DAYAL AND OTHERS,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 264-D/57.

1957

Dec., 18th

Constitution of India (1950)—Article 31—Acquisition of land for a Co-operative House Building Society—Whether acquisition for a public purpose Article 226—Land notified to be acquired—No objections filed by the owners—Award made by the Collector—Objections to the amount of compensation raised and reference to the District Judge under section 18 of the Land Acquisition Act (L of 1890), requested—Whether entitled to challenge acquisition by writ—Land Acquisition Act (L of 1890)—Section 6—Notification under for acquiring land for a company—Whether bad merely because no part of the compensation is to come out of the public funds—Land Acquisition Collector—Nature of his functions—Whether administrative—Collector taking proceedings and making award while his powers as such Collector not notified—Omission, whether can be rectified retrospectively by a later notification.

Held, that it is perfectly legitimate policy on the part of the Government, in view of the extraordinary shortage of house accommodation, to encourage the development of Co-operative House Building Societies on a non-profit basis,

and that it amounted to a public purpose if the Government helped such societies by acquiring land for them.

Held, that the petitioners did not raise any objections to the acquisition of land, participated in the proceedings before the Collector for the determination of the amount of compensation, waited to receive the award of the Collector and also initiated a reference under section 18 of the Land Acquisition Act, 1890, to the District Judge. From these facts it certainly appears to be a justifiable inference that the real objection of the petitioners is not so much to the acquisition of their land as to the amount of compensation which they are to receive for it, and that this writ petition would not have been filed at all if the petitioners had been awarded a price which gave them a sufficient amount as profit as compared with the price which was assessed for the land in the first instance. In the circumstances it is certainly justified to refuse the petitioners the discretionary relief of an order under the extraordinary powers of the Court conferred by Article 226 of the Constitution.

Held, that since the land is being acquired for a public purpose, and a Company, whose object is the public purpose in question, is furnishing the funds, the notification under section 6 is not bad merely because no part of the compensation is to come out of the public funds.

Held, that a Collector, while determining the compensation payable and making his award, performs administrative functions and is not a Court and even if his appointment as such Collector is not notified prior to his taking proceedings, the omission can be rectified retrospectively by a later notification and the proceedings taken and the award given by him are not *coram non judice*. There is no doubt about the proposition that in the case of a Magistrate or a Civil Judge any proceedings taken before such an officer before his office and powers had been duly gazetted would have to be held *coram non judice*.

Petition under Articles 226 and 227 of the Constitution of India praying that:

(a) A Writ in the nature of Certiorari be issued and all acquisition proceedings and the award, dated

23rd February, 1957, relating to the acquisition of 215 bighas 5 biswas of land situated in Malakpur Chhawni, known as Mubarak Bagh may be quashed;

(b) Any other appropriate writ or direction be issued to the Respondents directing them to treat the acquisition proceedings and award based thereon as wholly void and in-effective;

(c) That such other writ, directions and orders may be issued as may be deemed just and expedient in the circumstances of the case;

(d) That interim orders for maintaining the status quo may be passed;

(e) Costs of these proceedings may be awarded against Respondents.

S. C. ISSAC and KESHAV DAYAL, for Petitioner.

GURBACHAN SINGH, I. D. DUA, RAMESHAWAR DAYAL and YOGESHWAR DAYAL, for Respondents.

JUDGMENT.

Falshaw, J. FALSHAW J.—This is a petition under Article 226 of the Constitution filed by five petitioners, Bhagwat Dayal, Hans Raj, Bishambar Dayal, Brij Mohan and Rameshwar Dayal in which the Ministry of Works, Housing & Supply of the Union of India, the Land Acquisition Collector of Delhi and the Dera Ismail Khan Co-operative House Building Society Limited have been impleaded as respondents.

The case of the petitioners who are apparently business-men of Delhi, is that in 1944 they purchased by auction an area of land measuring 215 bighas and 5 biswas known as Mubarak Bagh in village Malikpur Chhawni, lying near the Grand Trunk Road leading to Ambala not far from the Sabzi Mandi area. At that time the land was used as an Orchard, but evidently the petitioners had purchased it with a view to develop it for residential purposes, and in

1950 they began seeking permission of the Notified Area Committee, which by that time had become necessary, for developing the land. Later in August, 1953 they submitted a Development Scheme to the Delhi Improvement Trust with a lay-out plan. The petitioners were still in correspondence with the Improvement Trust regarding the matter when on 23rd June, 1955 a Notification was issued by the Delhi State Government under section 4 of the Land Acquisition Act stating that the land was required for a public purpose, namely, the construction of houses for the Dera Ismail Khan Co-operative House Building Society Limited and that the land was required to be taken by the Government at the expense of the Society. The Notification contained the usual invitation from persons interested to file objections against the proposed acquisition. This was followed by the usual Notification, under Section 6 of the Act, dated the 14th of October, 1955.

Proceedings then took place before the Land Acquisition Collector culminating in an award passed by Murari Singh, Land Acquisition Collector, on the 23rd of February, 1957, according to which Rs. 2,58,300 *plus* 15 per cent on account of compulsory acquisition, i.e., Rs. 38,745, making a total of Rs. 2,97,045, were fixed as the price of the land.

The petitioners came to this court challenging the validity of the acquisition proceedings on the 21st of May, 1957.

One of the grounds on which the acquisition was challenged was that it contravened the provisions of Article 31 of the Constitution in that the land was being acquired for a private and not a public purpose. The same point was raised before me in Civil Writ No. 136-D of 1957, which I decided on

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26th of August, 1957. That was also a case in which some persons owning land in a village near Delhi challenged the proceedings for the acquisition of their land by the Government on behalf of a Co-operative Housing Building Society, in that case the Dayalbagh Co-operative House Building Society, Limited, Delhi. My views in that case may be summed up as being that I considered it a perfectly legitimate policy on the part of the Government, in view of the extraordinary shortage of house accommodation at Delhi, to encourage the development of Co-operative House Building Societies on a non-profit basis, and that it amounted to a public purpose if the Government helped such societies by acquiring land for them. In the circumstances the learned counsel for the petitioner did not attempt to re-open this matter before me, though he expressly reserved his right to raise this matter in any further proceedings arising out of the present petition.

Apart from allegations of *mala fides* and the invocation of article 14 of the Constitution, the two main points argued on behalf of the petitioners were that the acquisition proceedings were bad from the beginning owing to a defect in the Notification under Section 6 of the Land Acquisition Act and that they were without jurisdiction as the powers of the Land Acquisition Collector were only conferred retrospectively by the Notification, dated the 30th of March, 1957, more than a month after the award had been announced.

On behalf of the respondents it was contended that the petition was liable to summary dismissal on the simple ground that it was belated, since it was only filed in May, 1957, and its real attack is on the Notification of October, 1955. It is pointed out that the petitioners took part throughout in the proceedings before the Land Acquisition Collector, being represented by a counsel, and that ever since the award was announced, by which

apparently they were awarded more or less what they had paid for the land with the usual 15 per cent the petitioners had called for a reference, under section 18 of the Act as nearly as the 2nd of April, 1957. The reference in question is virtually an appeal against the award in the court of the District Judge. It is further pointed out that although objections by interested persons were invited by a Notification, under section 4 of the Act, dated the 23rd of June, 1955, the petitioners did not care to file objections of any kind, and, as I have said, they appeared before the Collector and prosecuted their claim for Rs. 13,00,000/- against the respondent Society.

From these facts it certainly appears to be a justifiable inference that the real objection of the petitioners is not so much to the acquisition of their land as to the amount of compensation which they are to receive for it, and that this Writ Petition would not have been filed at all if the petitioners had been awarded a price which gave them a sufficient amount as profit as compared with the price which was assessed for the land in the first instance. In fact they waited to receive the award of the Collector and also initiated a reference under Section 18 before coming to this Court, and this reference, in which it is possible that the price already fixed may be increased, is still pending. The present petition is in fact no more than a second string to the bow of the petitioners. In the circumstances it would certainly appear to be justified to refuse the petitioners the discretionary relief of an order under the extraordinary powers of the Court conferred by Article 226 of the Constitution.

However, I propose to deal with some of the points raised on behalf of the petitioners. Although the allegations that the acquisition by the Government on behalf of the respondent Society was *mala fide*, and that it contravened the provisions of Article 14 of the

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Constitution, were argued separately, the point involved was really one and the same, since the basis of the argument was that the petitioners were negotiating with the Improvement Trust for approval of their own scheme of developing the land for residential purposes at the time when the notifications, under sections 4 and 6 were published and the Government proceeded to acquire the land for development by the Respondent Society. The essence of the argument is thus that in preferring to give the land to the respondent Society for development the Government either acted *mala fide* or infringed the principle of equality before the law embodied in Article 14. The main allegation of *mala fides* was that the acquisition proceedings had been rushed through early in 1957 with an eye on the General Elections which were about to take place at that time. In my opinion there is nothing whatever in this suggestion. The relevant notifications had been issued in June and October, 1955, long before the General Elections were contemplated and the acquisition proceedings had been going on, during the year 1956, the petitioners' claim being presented before the Land Acquisition Collector in February 1956. In the circumstances it would seem to have been high time in January, 1957 that the acquisition proceedings should be brought to a conclusion. The general allegation of favouritism also appears to be unfounded in so far as it relates to any particular favouritism shown towards the Society which is the respondent in the present petition, since it is well known that the Government was acquiring land on behalf of other societies founded for the purpose of providing residential accommodation on a co-operative basis. I have already referred to one such case which came before this Court by way of a similar Writ Petition, and I have also dealt with another case concerning land acquired by the Government on behalf of the Co-operative Society responsible for developing the so-called Friends Colony, and to my mind the decision that such acquisitions are for a public purpose settles the question of

alleged *mala fides*. As far as article 14 is concerned, an attempt was made to argue that the present petitioners also intended to develop the land as a residential estate on co-operative lines and that therefore there was no justification for taking the land away from them and giving it away to the Society. Out of all the documents produced however there is nothing whatever to show that the petitioners had any intention of developing the land on a co-operative basis except an isolated sentence in the letter, dated 21-8-1951 to the Improvement Trust in which it was stated that a Colony would be developed on a co-operative basis on the most modern lines and according to the Municipal Bye-laws. There is, however, nothing whatever to show that the petitioners had taken any steps whatever to enrol any members or get any co-operative society registered under the appropriate Act. There is no suggestion that the petitioners are displaced persons, as the members of the respondent Society must be, and in my opinion there is nothing whatever to show that they intended to develop the land otherwise than as a commercial proposition out of which they expected to make considerable profits on their original investment. Thus if in fact there was any favouritism in taking away the land from the petitioners for development by the respondent Society it seems to me to be fully justified and in accordance with the general spirit shown by the Government both in legislation and in administrative acts carried out for the benefit of displaced persons as a class.

The validity of the acquisition proceedings is challenged on the ground that the Notification published under Section 6 of the Act, in pursuance of which they were initiated, contravenes the provisions of Section 6(1). This reads:—

> "6(1) Subject to the provisions of Part VII of this Act, when the Provincial Government is satisfied, after considering the

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report, if any, made under section 5-A subsection (2), that any particular land is needed for a public purpose, or for a Comany, a declaration shall be made to that effect under the signature of a Secretary to such Government or some officer duly authorised to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

It is pointed out that although in the Notification under Section 6 it was merely stated that the land was required for a public purpose, namely, for the construction of houses by the Dera Ismail Khan Co-operative House Building Society Limited, it had clearly been declared in the earlier Notification under Section 4 that the land was likely to be required to be taken by Government at the expense of the Dera Ismail Khan Co-operative House Building Society Limited, and it has been admitted that in fact the money to be paid as compensation for the land was to come from the funds of the Society. On the other hand, although it was denied in the petition, it is now admitted that the Society is a Company within the meaning of the definition contained in Section 3(e), which includes both societies registered under the Societies Registration Act of 1860 and societies within the meaning of the Co-operative Societies Act of 1912. It is thus contended by the Society that the money was to be paid by a Company within the meaning of the proviso to Section 6(1).

The contention on behalf of the petitioners is that a Company referred to in Section 6(1) must be a company on whose behalf land is being acquired under special provisions of the Act relating to acquisition of loan on behalf of Companies contained in part VII of the Act. In this part only two kinds of acquisition on behalf of companies are contemplated: (1) for the purpose of erecting dwelling houses for workmen employed by the Company or for the provisions of amenities directly connected therewith, or (2) the construction of some work which is likely to prove useful to the public. In case of such an acquisition an agreement has to be executed by the Company in favour of the Govenment, under Section 41, providing for terms regarding payment and transfer of the land and the conditions under which the Company shall be entitled to hold the land. Such an agreement is said to exist in the present case between the Society and the Government. It is undoubtedly true that the purpose for which the land is being acquired for the Society is not exactly governed by the contingencies contemplated in Part VII of the Act, which does not appear to have been drawn up with a view to the possibility that a Company within the meaning of the Act might wish to acquire land when the whole purpose of the Company, by which I mean the object for which it was founded, was a public purpose, such as the development of land for residential purposes on a co-operative basis for its members, and not for its workmen. It could not possibly, however, have been intended that a Company of this kind, whose purpose was a public purpose under the prevailing circumstances, should be excluded from the scope of the Act, and I am not prepared to interpret the proviso in Section 6(1) in such a manner as to produce this effect. I am, therefore, of the opinion that since

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the land is being acquired for a public purpose, and a Company, whose object is the public purpose in question, is furnishing the funds, the Notification, under Section 6 is not bad merely because no part of the compensation is to come out of the public funds.

It seems that the acquisition proceedings during 1956 were conducted before some other Land Acquisition Collector and that Murari Singh, who delivered the award, appeared on the scene only in January, 1957, and merely heard arguments and drafted the award. He was apparently an Additional Revenue Assistant at Delhi and it seems that by an oversight he took charge of the proceedings and announced the award without his appointment to perform the functions of a Collector under the Land Acquisition Act, having been duly notified. This omission was rectified by a Notification, dated the 30th of March, 1957, which was made retrospective as from the 7th of January, 1957. It was thus contended that the award was delivered by an officer without jurisdiction. This objection would certainly have had some force if in any sense of the word a Collector under the Land Acquisition Act, could be deemed to be a Court. There is no doubt about the proposition that in the case of a Magistrate or a Civil Judge any proceedings taken before such an officer before his office and powers had been duly gazetted would have to be held *coram non judice*. There is, however, some authority for holding that an Officer of this kind is only performing an administrative function. In *Sm: Kako Bai* v. *The Land Acquisition Collector, Hissar and others* (1), Bishan Narain J. has expressed the view that an enquiry by a Collector, under the Land Acquisition Act, is

(1) A.I.R. 1956 Punjab 231.

an administartive and not a judicial proceeding and that the award made by the Collector under Section 11 of the Act is not a final award binding on the claimant but merely a tender or an offer of an amount mentioned in the award as compensation payable by the Government to the claimant. An award is in fact merely the starting point of other proceedings, and is almost invariably followed by a reference to the District Judge, which is called a reference rather than an appeal although in effect it is virtually an appeal, and then an appeal to the High Court. In the circumstances I do not consider that there is any ground for interference and dismiss the petition with costs. Counsel's fee Rs. 100 to each of the respondents.

B.R.T.

APPELLATE CIVIL.

Before Gosain and Grover, JJ.

THE CENTRAL BANK OF INDIA, LTD.,—*Defendant-Appellant.*

versus

FIRM RUR CHAND-KURRA MAL,—*Plaintiff-Respondent.*

Regular First Appeal No. 235 of 1950.

1957

Dec., 19th

Indian Contract Act (IX of 1872)—Section 194—Agent authorised to appoint another to execute the work of agency —Privity of contract—Whether created between the principal and the "substitute"—Substituted agent and sub-agent—Difference between—Liability of the original agent—Whether exists after their appointment—Indian Evidence Act (I of 1872)—Section 101—Executant of a document admitting his signatures thereon—Onus to explain the circumstances under which he signed it—On whom lies—Section 114(g)—Firm failing to produce its account books—Presumption to be drawn—Practice—Plea not raised in the plaint nor any issue framed on the point—Whether can be allowed to be raised in appeal